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Federal Communications Commission

DA 98-2404

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Logan, Utah))

MM Docket No. 98-211

RM-9349

NOTICE OF PROPOSED RULE MAKING

Adopted: November 25, 1998

Released: December 4, 1998

Comment Date: January 25, 1999

Reply Date: February 9, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by L. Topaz Enterprises, Inc. ("Topaz"), proposing the allotment of Channel 252C3 to Logan, Utah, as that community's third local FM service. Topaz indicated that it would file an application for Channel 252C3 at Logan if the channel is allotted to the community.

2. In support of its request, Topaz states that the allotment of Channel 252C3 would provide the community of Logan with its third local service. Topaz points out that Logan has the usual indicia of a community and that the community has a population of 32,762 people according to the 1990 Census. Topaz further states that Logan is located in Cache county in northern Utah, approximately 115 kilometers north of Salt Lake City.

3. We believe the proposal warrants consideration because the proposed allotment would provide additional broadcast service to Logan and the surrounding area. A staff engineering analysis indicates that Channel 252C3 can be allotted to Logan consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction 4.3 kilometers (2.6 miles) south of the community.¹ The site restriction will prevent a conflict with an application for Channel 249A at Franklin, Idaho (BPH-970814MJ) and to the vacant allotment site for Channel 249A at Franklin.

¹ The coordinates for Channel 252C3 at Logan are 41-42-08 and 111-50-12.

4. In view of the fact that the proposed allotment could provide additional broadcast service to Logan, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 252C3 to Logan, Utah. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Logan, as follows:

Community	Channel No.	
	Present	Proposed
Logan, Utah	225C2, 233C	225C2, 233C, 252C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **January 25, 1999**, and reply comments on or before **February 9, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Dale A. Ganske, President
L. Topaz Enterprises, Inc.
5546-3 Century Avenue
Middleton, Wisconsin 53562

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation.

and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, 445 Twelfth Street, S.W.; TW-A325, Washington, D. C. 20554.